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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 262 and 265

TANF Assistance and Electronic Benefit Transfer Transactions; Request for Public Comment

AGENCY: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance (OFA)

ACTION: Request for public comment.

SUMMARY: The Office of Family Assistance (OFA) is interested in learning about how States deliver Temporary Assistance to Needy Families (TANF) assistance to beneficiaries, whether States have implemented policies and practices to prevent electronic benefit transfer transactions involving TANF assistance in liquor stores, casinos, gambling casinos, or other gaming establishments, and retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; what the States' experiences have been in implementing such policies and practices; and whether States place other similar types of restrictions on assistance usage. OFA also is interested in learning about States' current approaches to ensuring that recipients have adequate access to their cash assistance, including policies that provide access to assistance with no fees or charges or current approaches to imposing fees or charges in connection with receipt of assistance, along with other information relevant to considering what might be minimal fees or charges. Additionally, OFA

is interested in hearing the perspectives of vendors, consumer advocates, and any other individuals or entities that have information that could be relevant to the development and implementation of policies and procedures to prevent electronic benefit transfer transactions in certain establishments, and to ensuring access to cash assistance with minimal fees or charges, including opportunities to access assistance without fees or charges.

The information provided will be used to inform OFA as it develops regulations to implement Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), which, among other things, requires States to prevent the use of TANF assistance in electronic benefit transfer transactions at specified locations.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before insert date of 45 days after publication.

ADDRESSES: Interested persons may submit written comments by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments.

Email: [TANFEBTTransactions@acf.hhs.gov](mailto:TANFEBTTransactions@acf.hhs.gov) Please include “Comments on EBT Federal Register Notice” in the subject line of the message.

Mail or Courier Delivery: Robert Shelbourne, Office of Family Assistance,  
Administration for Children and Families, 901 D Street, SW, 5<sup>th</sup> Floor, Washington, DC 20447

Instructions: If you choose to use an express, overnight, or other special delivery method, ensure that delivery may be made at the address listed under the ADDRESSES section.

We urge interested parties to submit comments electronically to ensure that they are received in a timely manner. All comments received will be posted without change to

<http://www.regulations.gov>. This will include any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Office of Family Assistance, 901 D Street, SW, 5<sup>th</sup> Floor, Washington, DC 20447, (202) 401-5150.

#### SUPPLEMENTARY INFORMATION:

On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96). Section 4004 of the Act requires States (but does not require Tribes) to prevent the use of Temporary Assistance for Needy Families (TANF) assistance in electronic benefit transfer (EBT) transactions at specified locations. In particular, the law requires States receiving TANF grants “to maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.” The law defines an electronic benefit transfer transaction as “the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.”

The law imposes a new reporting requirement as well as a new penalty. Each State is required to report to HHS by February 22, 2014, on its implementation of policies and practices related to restricting recipients’ use of EBT cards at the locations specified in the previous paragraph. As required by the law, HHS shall reduce a State’s block grant if the State fails to comply with this reporting requirement or if, based on the information that the State reports,

HHS finds that the State has not implemented and maintained the required policies and practices. Furthermore, States are required to include in their State plans a statement outlining how they intend to implement policies and procedures to prevent access to assistance through electronic fund transfer transactions at casinos, liquor stores, and establishments providing adult-oriented entertainment. The State plan also must include an explanation of how the State plans to ensure that (1) recipients of the assistance have adequate access to their cash assistance, and (2) recipients of assistance have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available.

The Office of Family Assistance is seeking responses to the following questions to help inform us as we draft the regulation to implement the statutory requirement. We do not intend to respond to comments provided in response to this Request for Public Comment. However, in the notice of proposed rulemaking, we will provide a general summary of the comments that influenced our policy decisions, and will respond to comments submitted in response to the notice of proposed rulemaking when a final rule is issued.

### Questions

Please identify the question to which you are responding.

#### Benefit Delivery System

1. What method or methods of delivery does your State use to provide TANF assistance? For example, does the State use checks, direct deposit into recipient checking account, Electronic Benefit Transfer (EBT) cards, Electronic Payment Cards (EPC) (co-branded with Visa or MasterCard)?

2. For each method used, does the State currently track the site at which a transaction occurs?

If the State is able to identify the site at which a transaction occurs, what process does or would the State need to initiate to determine if the site was a liquor store, gaming establishment or adult entertainment venue? Are there different issues for different types of venues?

### Implementing EBT Restrictions

3. For those with knowledge of what has happened in a State or States that have implemented some form of EBT transaction restriction:
  - a. What is the nature of your restriction? Please provide as much specificity as possible, including the definitions used for any establishment type for which TANF benefit access was restricted. If the State's restriction appears to differ from the EBT transaction restriction contained in section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, please describe those differences.
  - b. Was the restriction put in place in response to a legislative mandate or by executive action without a specific legislative mandate? If in response to a legislative mandate, what did the legislature require?
  - c. If your State imposes EBT transaction restrictions relating to liquor stores, casinos, gambling casinos, or other gaming establishments, or retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, can you please indicate: which of these locations are subject to restriction, and what is the definition used to describe the restricted location?
  - d. What specific method and procedures does the State use?

- e. What challenges to implementation have been encountered and how did the State address them?
- f. Please provide any information available concerning initial and continuing costs.
- g. Does the State identify locations where benefit access is to be restricted through a manual process, an automated process or some combination of the two? Please describe the process for identifying these locations.
- h. Has your State implemented what you consider an effective method of restricting access to EBT usage at specified locations? Please describe why you think it is effective (e.g. cost effective, achieves desired outcomes)?
- i. What concerns have been raised by businesses, electronic benefit vendors, and/or TANF recipients, relating to access, cost, or other issues, in relation to the restrictions? Have particular concerns been raised relating to rural areas of the State? If so, what are those concerns, and how, if at all, have those concerns been addressed?
- j. If your State passes through child support to families receiving TANF assistance, how, if at all, do the TANF assistance restrictions affect provision of passed-through child support?
- k. Are your State's restrictions limited to TANF assistance, or do they affect any other benefits provided electronically? If the restrictions are limited to TANF assistance, how, if at all, do restrictions on accessing TANF assistance affect access to any other benefits?
- l. Are there particular issues not discussed above that have arisen in design or implementation that could be useful for OFA to be aware of in the development of regulations relating to this topic?

4. With regards to States that have not implemented EBT transaction restrictions, have you considered and examined issues relevant to implementation of such restrictions? If so, can you identify issues and considerations that have arisen for you as you considered such requirements?
5. For any State, do you currently have information about the incidence of the use of TANF assistance EBT transactions in liquor stores, gaming establishments, and adult entertainment venues?

#### Access Fees or Charges

6. With respect to any State, please describe the fees and charges that TANF recipients face when accessing their TANF assistance benefits. If the fees or charges differ based on number of withdrawals or where or how benefits are accessed (such as via an ATM vs. point of sale transaction), please describe the differences in fees under all relevant benefit access mechanisms.
7. Does your State provide any mechanism that allows TANF assistance recipients to access benefits without facing any fees or charges? If so, please describe.
8. How, if at all, does your State make information available to TANF assistance recipients about where to access TANF benefits, the fees and charges associated with accessing benefits under various scenarios, and how benefits can be accessed without any fees or charges?
9. What, if anything, do you think should be done to reduce the costs of accessing TANF benefits?
10. Please describe any access barriers, that you think TANF assistance recipients currently face or could face under the restrictions and what mechanisms, if any, you think could reduce those access barriers while ensuring that TANF benefits are not accessed through EBT

transactions at those establishments for which access is restricted under section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

EBT vendor input

11. For companies that provide electronic benefit services to States with respect to TANF assistance, please describe the implementation issues you think States could or would face in implementing the restriction required under section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012. Please describe technical issues, cost implications, and access implications as well as mechanisms for addressing problems identified.

We welcome any other comments you have about the TANF EBT provisions contained in Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

Dated: April 5, 2012.

Earl Johnson, Director, Office of Family Assistance.

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